IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No. 73 of 2005.

Reserved on : 24.03.2006.

Date of decision: 10.04.2006.

Sanjay Thakur. Petitioner.

Versus

Smt. Asha Devi and others. Respondents.

Coram:

The Hon'ble Mr. Justice K C Sood, J.

Whether approved for reporting **?**[1]

For the Petitioner : **Shri R.L. Sood, Senior Advocate with M/s Sandeep Kaushik and Balwant Kukreja, Advocates.**

For the Respondents : **Shri R.K. Bawa Senior Advocate with Mr. Rajpal Singh Thakur, Advocate.**

K C Sood, J.

This revision petition under Section 24 (5) of the Himachal Pradesh Urban Rent Control Act, "Rent Act" for short, is laid by Sanjay Thakur, landlord, against the dismissal of his eviction petition, by the Appellate Authority, Shimla in Civil Misc. Appeal No.22-S/14 of 2003 decided on June 18, 2005 reversing the judgment of the learned Rent Controller, Shimla.

In order to appreciate the controversy, relevant facts may be noticed:

Sanjay Thakur, petitioner herein, is owner/landlord of Shop No.5, Marina Hotel Building, The Mall, Shimla. This shop is part of Marina Hotel Complex. Respondent Balak

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[1] ***Whether reporters of Local Papers may be allowed to see the judgment?***

Ram (since deceased) through his legal representatives in this petition, is the tenant of Shop No.5, Marina Hotel Building. Landlord filed a petition before the Rent Controller, Shimla under Section 14 (3) (c) of the “Rent Act” pleading that the premises under the tenancy of respondent Balak Ram (ShopNo.5, Marina Hotel Building) are bonafide required by him for the purpose of re-building and reconstruction which cannot be carried out without the shop in question being vacated by the respondent. His case in the petition is that the building is more than hundred years old made of old wood and Dhajji wall. The building had outlived its span of life. The condition of the building is bad and dilapidated. The entire building, it is alleged, requires reconstruction/re-building afresh by pooling down the existing structure. The entire building, it is alleged, is in possession and occupation of the petitioner except the two shops. A separate petition for the other shop has been filed against the tenant who is in occupation of the shop. The shop in question along with other shop is required by the petitioner for the purpose of re-building and reconstruction which cannot be carried out without the rental premises being vacated by the tenant. It is further pleaded, the landlord had obtained sanction from the competent Authority for reconstruction. He has means to build the building and the funds are available for the reconstruction of the building. The petition was contested by the tenant on several grounds including that the building was in good condition and that the hotel Marina Building can be demolished and re-build without touching the shop in question.

Learned Rent Controller by his order dated April 28, 2003, after appraising the evidence and other material on record, found that the landlord required the demised shop bonafide for the purpose of re-building the Marina Hotel for which the plan had been sanctioned by the competent Authority, i.e, Municipal Corporation, Shimla. He also concluded that the hotel could not be constructed without it being vacated and the landlord has the means to re-build the hotel and that under Section 14 (3) (c), the landlord is not required to prove that the building is really in dilapidated condition provided the need of the landlord is bonafide and he intends to put the premises in question to more profitable use. The objection of the tenant that the petition was bad for non-joinder of necessary parties and the petitioner had no cause of action was over ruled.

Dis-satisfied, the tenant carried an appeal under Section 24 of the Act before the Appellate Authority. The Appellate Authority, by impugned judgment, set-aside the judgment of the Rent Controller holding that though the landlord had the means to re-build the building as per sanctioned plan on record (Exhibit PW2/A), he also observed (in para 20 of the judgment) that the Marina Hotel Building was a commercial building and the landlord intends to raise new construction to put the Hotel to more profitable use but took a view that as no construction is to be made under the sanctioned plan after the demolition of the shop in question as the demised premises has been shown as front of the reconstructed hotel building, therefore, the requirement of the landlord cannot be said to be bonafide. He held that the demised premises is at a distance of thirty

feet from the main hotel building and separated by water tanks located in between both the buildings. He also took a view that had the landlord made a plan to rebuilt or the demised shop in the occupation of the tenants then alone he was entitled to get the shop in question vacated and for this reason, the provisions of Section 14 (3) (c), are not attracted and the need of the petitioner cannot be said to be bonafide.

Aggrieved, the landlord is in this revision petition.

Heard Mr. R.L. Sood, Senior Advocate and Mr. Sandeep Kaushik Advocate for the petitioner, Mr. R.K. Bawa, learned Senior Advocate with Mr. R.P. Thakur Advocate for the respondents.

The contention of the learned counsel for the landlord is that the landlord intents to build a modern new hotel under the sanctioned plan and the shop of the respondents had to be demolished in order to construct modern hotel with drive-in facilities and the space which becomes available after the demolition of the demised shop would be used as front or parking of the hotel and, therefore, it cannot be said that the shop in dispute is not bonafide required for the purpose of reconstruction/re-building of the hotel premises as approved by the Competent Authority.

Mr. Bawa, learned Senior Counsel for the respondents, on the other hand would contend that the tenant can only be evicted from the shop if this shop is to be re-built on the same lines by the landlord.

Section 14 (3) (c) of the Rent Act, relevant for our purposes, may be reproduced for convenience:

"*14. Eviction of tenants.:*

(1) xxx xxx xx

(2) xxx xxx xxx

(3) xxx xxx xx

(a) xx xxx xx

(c) *in case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation or is required bona fide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land are required bona fide by him for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated"*

For our purposes, the relevant provision on which the eviction of the tenant from the shop is sought is if the landlord requires bonafide the premises in question;

a) *For the purpose of building or re-building or making thereto any additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated.*

The contention of Mr. Bawa, learned Senior counsel is that unless the landlord requires to re-built the tenanted premises and those in fact have to be re-built, the landlord cannot ask for the eviction of the tenant. The argument is fallacious to which I shall advert a little later.

In the present case, there is no dispute and the learned counsel admits that the landlord has necessary means and funds to rebuild the hotel as per the sanctioned plans of the Municipal Corporation. As observed by the learned Rent Controller, the balance sheet Exhibit RX filed by PW1, father of the petitioner, shows that assets of the father of the petitioner are from 2.50 crores to 3 crores and he has categorically deposed that he will given interest free loan to his son to the extent of 1.5 crores to reconstruct and re-build Marina Hotel. In fact, both the courts, as noticed earlier, have concluded that the landlord has sufficient means to rebuild and reconstruct the hotel and this position is not disputed before me.

It is now settled position in law, as observed by the Constitution Bench in *Vijay Singh and others v. Vijayalakshmi Ammal (1996) 6 SCC 475,* that in such situation, the relevant factors for making an order of eviction would be:

a) *bonafide intention of the landlord far from the sole object only to get rid of the tenants;*

b) *the age and condition of the building;*

c) the financial position of the landlord to demolish and erect a new building.

The Apex Court R.V.E. *Venkatachala Gounder v. Venkatesha Gupta and others, (2002) 4 SCC 437* and in

Harrington House School v. S.M. Ispahani and another, (2002) 5 SCC 229, took a view that the fact that demolition and reconstruction would result in modernization, making additional space available and/or would augment the earning of the landlord are relevant factors for determining the bonafides of the requirement for demolition and reconstruction.

In the present case, the landlord requires the premises to re-build his hotel as per the approved plan. At this stage, it may be noticed that these shops are in the complex of present “Marina Hotel” but is separated from the main building by some distance. It is the evidence of the landlord appearing as PW4 that the Marina Hotel Building and the shop in question is hundred years old and the disputed shop, including other shops are within the complex of Marina Hotel. The entire building is kutcha built in Dhajji walls and that he intends to reconstruct the hotel building as per approved plan ”Exhibit PW2/A”. This new hotel building, says landlord, cannot be constructed without the shop in question being vacated by the tenant. He says that after the demolition of the shop in question, no construction would be raised over it, rather it would be used as front portion of the hotel. In cross-examination he reiterates that in the plan sanctioned by the Municipal Corporation, no shop or structure is to be raised in place of the tenanted shop. He denies that he had promised the tenant to rehabilitate him. Smt. Sharda Senior Clerk of the Municipal Corporation has proved the map Exhibit PW2/A as sanctioned by the Municipal Corporation which are in seven leaves. Copy of the letter of sanction is Exhibit PW2/B and PW2/C. In cross-examination she says that she

is unable to say on which particular Khasra number is the main building and on which particular Khasra number is the shop in question but according to her, its reference is in the Jamabandi., Sanjay Gautam (PW3) an Engineer says that Marina Hotel is being reconstructed under his supervision. The present structure is hundred years old and it is necessary to re-build the hotel that the shop in question to be vacated and the hotel building could not be constructed unless the shop is vacated. In cross-examination he says that there is no provision to re-build this shop in the sanctioned plan and the space of the shop in question would be front portion of the hotel.

Balak Ram (RW1) the tenant in his deposition admits in the cross-examination that the building is hundred years old and there are four shops in this building which are at some distance from the main building but within the Marina complex and that the petitioner has filed eviction petitions against all the tenants of the shops and that he has approved maps for the reconstruction of the hotel. He is unable to say if the space occupied by the shops in question would be used as front portion of the hotel as per the approved plan. In the end he admits that the landlord requires the premises bonafide but according to him, where he would go. In his own words, *“It is correct that the petitioner requires my shop but voluntary stated, where would I go”.*

Respondent has produced Shashi Thakur, a clerk of the Planning Branch of the Municipal Corporation who, as per record, stated that the hotel is located in khasra number 495 and Khasra number 492. Khasra Number 492 is

occupied by shop and that the hotel is to be re-built as per sanctioned plan Exhibit PW2/A on Khasra numbers 483, 491, 492, 493, 494, 495, 496, 497, 553, 489 and 490. It thus is proved and not in dispute that the shop in question has to be demolished if new hotel is to be reconstructed as per the sanctioned plan and the space available would be used as front portion of the hotel.

So far the contention of Mr. Bawa, learned Senior Counsel that the shop in question can only be got vacated if it is to be rebuild is concerned, the same is untenable in view of the provisions of Section 14 (3) (c). A reading of Section 14 (3) (c) shows that if the landlord bonafide requires a particular building for the purpose of building or re-building or making thereto any substantial additions or alterations and such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated, then he would be entitled to an order of eviction.

In the present case, the landlord requires the tenanted shop for the purpose of re-building his hotel and this space will be caused as front portion of the hotel though no structure would come up on the space of the shop in question, after the demolition of the rented shop and the other adjoining shop and therefore, by no stretch it can be said that the landlord does not require the premises bonafide for the purpose of building and re-building.

Now if the main building is to be rebuilt or entire hotel building is to be reconstructed and that reconstruction cannot take place, without the shop in occupation of the tenant being vacated under the approved plan, which space would be levelled to be used as front portion of the Hotel, then this

requirement indeed will fall within the scope of Section 14 (3) (c) of the Rent Act. In this case, the requirement of the landlord of the shop in question has direct connection for the proposed construction of the new Hotel.

I draw support for the view I have taken from *Santosh Kumar Aggarwal –v- Special Judge, Allahabad 2001 (2) RCR 222.* In that case, the landlord moved an application for release under Section 21 (1)(b) of the U.P. Act alleging that the shop is in dilapidated condition and is required for demolition and new construction. The High Court held that if the main building is to be reconstructed then part of the building which is not dilapidated is also to be released. In another case, *2001 (1) RCR 157*, a petition for eviction was filed by the landlord on the grounds that building was bonafide required for demolition and reconstruction. Landlord in that case wanted to demolish the building and reconstruct for business. The accommodation in occupation of the tenant was to be used as parking lot. The Karnataka High Court in this context held that the requirement of the landlord has direct bearing on the proposed construction on large scale.

In the present case also the landlord want to reconstruct his hotel on modern lines and for that purpose, he require the tenanted shop to use the space for front portion of the hotel and has a direct connection with the proposed construction by the landlord and this hotel indeed cannot be constructed on those lines unless this shop is vacated by the tenant.

A contention was raised that the building which is to be reconstructed and the shop in question is not in dilapidated condition and therefore, not bonafide required by the

landlord. A reading of sub-section (4) (3) (c) clearly shows that Section 14 (3) (c) of the Rent Act contemplate different and independent situations and circumstances enabling a landlord to apply for eviction of the tenant. These situations/circumstances are:

a) *When the tenanted premises are required by the landlord to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development Scheme*

or

b) *when tenanted premises have become unsafe or unfit for human habilitation*

or

c) *when the tenanted premises are required bonafide by the landlord for carrying out repairs which cannot be carried out without the building or rented land being vacated*

or

d) *when the tenanted premises are required bonafide by landlord for the purpose of building or re-building or rented land is required bonafide by him for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be*

carried out without the building or rented land being vacated.

(emphasis given)

It may be seen that the condition of the building is required to be considered only when an application falls under (c). Admittedly, in the present case, the petition for eviction falls under (d) and there is no requirement to go into the condition of the building (*See: Prem Chand alias Prem Nath –v- Shanta Prabhakar (Smt) 1998 (1) SCC 274*

In the end Shri Bawa, learned Senior counsel submitted that Marina Hotel which is to be reconstructed falls in core area and prior permission of the State Government is required and in the present case, there is nothing on the record that such permission has been obtained by the landlord and therefore, the landlord will not be able to reconstruct the building. The augment is noticed to be rejected. Firstly, this notification was issued on August 22, 2002 whereas, the rent petition was filed on November 29, 2001 anterior to the notification after the building plan had been approved by the Municipal Corporation. Secondly, the landlord is to construct his hotel in accordance with the approved plan. Approval was given in accordance with bye-laws/regulations and it is not open to this Court to sit in judgment whether the plan was validly sanctioned or not.

This Court in *Harswarup –v- Ram Lok Sharma 2000 (3) Shimla Law Cases* relying upon *Amarjeet Singh v. Anju Ram 1997 (1) Shimla Law Cases 492* held that even if sanction has not been obtained from the concerned authorities, the same cannot be a ground to defeat the claim

of the landlord as such a sanction could be obtained by the landlord at subsequent stage.

Issuance of the notification in 2002 by the State Government banning construction in the core area without permission of the State Government after sanction of the building plan is not relevant in this case.

This apart, this question was not raised either before the Rent Controller or before the First Appellate Authority even though both the Rent Controller and the Appellate Authority decided the rent petition much after the issuance of the notification.

No other point was urged.

In result, the petition is allowed. Impugned judgment of the Appellate Authority dated 18.6.2005 is set aside and the order of the Rent Controller dated 28.4.2003 is restored. The respondent-tenant shall hand over the vacant possession of the tenanted ship within 30 days from today. No order as to cost.

CMP No. 145 of 2006.

During the course of hearing, the respondent moved this application for appointment of local commissioner to visit the spot with regard to the construction. completion of the structural work. The question as to the stage of the construction or completion of the structural work has no bearing on this case. The application is rejected.

CMP No. 97 of 2005.

The application has become infructuous in view of the disposal of the revision petition.

(K C Sood)
Judge.

April 10, 2006.
(BM)